IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.A. NO. 1517 OF 1999

Haridasan Thambi .. Appellant

- Vs -

The General Manager (Administration)
State Express Transport Corporation
Tamil Nadu Division - I Ltd.
Chennai - 2. .. Respondent

Writ Appeal filed against the order dated 6th July, 1999, passed by learned single Judge in W.P. No.11499 of 1999.

The Writ Petition presented under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records from the respondent relating to the order No.17/14888/04 dated 23.2.1999 transfering the petitioner from computer operator in EDP Section in Trichy to Technical side as Assistant Tradesman in Chennai Depot and quash the same and consequently direct the respondent to post him as computer operator in EDP Section.

For Appellant : Mr. D.Hariparanthaman

For Respondent : Mr. V.R.Kamalanathan

JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant, who was functioning as Computer Operator in EDP Section, Trichy, having transferred to technical side as Assistant Tradesman, challenged the order No.17/14888/A4 dated 23rd Feb., 1999 passed by General Manager (Admn.), State Express Transport Corporation Ltd., T.N. Division-I, Madras (hereinafter referred to as 'Corporation'). The writ petition has been dismissed by learned single Judge by common order passed alongwith other writ petitions and, hence, the present appeal.

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2. It appears that the appellant joined the service on 1st Sept., 1981, as Technical Assistant at Madras in the erstwhile Thiruvalluvar Transport Corporation, Chennai, now known as State Express Transport Corporation, Chennai. In 1989, as it appears, computer operators were required for EDP Section. Though no specific post appears to have been created, the Managing Director, Thiruvalluvar Transport Corporation, Chennai, issued circular No.1557/A1/T.Trans/89 dated 26th March, 1989, inviting applications from willing workmen of the Corporation to appear in the test on 26th March, 1989, a Sunday, in the headquarter office at Chennai for selection as computer operator in EDP Section. The appellant, along with others, participated in the test and on the basis of marks secured in the test, a panel was prepared, published and circulated on 26th March, 1989, wherein name of appellant was reflected at S.No.26 of the merit list. In the circular it was mentioned that the individuals from the list, based on need, will be transferred to computer section and will be given requisite training at appropriate time. It was also mentioned that the computer section was to function for 24 hours. The selected individuals will have to work in turn in one of the three shifts.

3. It is the case of the appellant that while he was working in the central workshop at Trichy, was relieved from Trichy by order dated 24th May, 1989 to join training where he joined on 29th May, 1989 and completed training on 8th June, 1989. Thereafter, he was posted as computer operator in EDP Section in Marthandam Depot in Kanyakumari District. Since there was no depot at Trivandrum, under the control of Marthandam Depot, the appellant was required to work at EDP Section, Trivandrum by the Branch Manager of Marthandam Depot. After Trivandrum Depot was established, the appellant continued to serve as computer operator in Trivandrum Depot.

On 8th April, 1994, the appellant was transferred from Trivandrum Depot to Kanyakumari Depot where in absence of EDP Section, he was asked to work as technical workman. At that stage he represented before the authorities stating that he was working as computer operator and, therefore, he should be transferred to EDP Section and not to the technical side. On the basis of such application, by order dated 18th May, 1994, he was transferred back to EDP Section in Marthandam Depot, where he continued.

Again, while he was functioning as computer operator in the EDP Section in Marthandam Depot, he was transferred to the technical side in the same depot vide order dated 12th Aug., 1997. Consequential order of transfer was issued on 23rd Aug., 1997 and the appellant was asked to join the technical side. When the matter was again brought to the notice of the

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authorities, the appellant was again transferred back to EDP Section as computer operator, but in Trichy Depot, by order dated 27th Sept., 1997. However, after about 1½ years, he was again transferred from EDP Section to technical side vide order dated 23rd Feb., 1999, which was served on him on 2nd March, 1999. He preferred a representation, but no reply having received, a writ petition, W.P. No.11499/99 was preferred.

Learned single Judge, by impugned order dated 6th July, 1999, dismissed the writ petition on the ground that the transfer is a condition of service and that the appellant was only deprived of a special pay attached to the post and that as long as the appellant was posted in EDP Section, he was only entitled for special pay, but not against other post. It was also observed that there is no cadre of computer operator nor the appellant was appointed to any such post and, thus, the order of transfer was not vitiated, transfer being an incidence of service.

4. Learned counsel for the appellant while submitted that the order of transfer is violative of Article 14, according to him, the said order is also against Section 9-A of 4th Schedule of Industrial Disputes Act, 1947, condition of service having altered. Reliance was placed on one or other decisions of this Court and Supreme Court.

On the other hand, according to learned counsel for the Corporation, transfer is an incidence of service and no person can claim posting against a particular post or in a particular place.

5.Admittedly, a special pay was attached for performing duty of computer operator in EDP Section and no person has right to claim special pay, if not posted against such post. Normally, transfer is accepted as incidence of service and no person has a right to continue at one place against a particular post till it is shown that the order is arbitrary or against law. Apart from routine transfer, transfer may be a mode for appointment in different service, if appropriate selection procedure is followed for posting a person against a particular post or department or section.

6. It is not in dispute that EDP Section was opened in 1989 and Corporation was in need of computer operators. The Corporation has also not disputed the fact that for posting in EDP Section to perform the duty of computer operator, a selection was made calling for applications from eligible persons to appear in test. The appellant appeared in the test held on 26th March, 1989 (a Sunday) and having come out successful, his name was shown in the selected list dated 26th March, 1989 and he was sent for training and posting in EDP

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Section was made on the basis of such selection on merit. Once a procedure of selection is made, in such a case it cannot be termed to be a mere transfer against one or other post, which is made in a routine manner against a cadre post without adjudging the merit of any individual. Once the merit is adjudged for posting against a particular post or in a section to perform one or other job, it is a selection and persons selected for posting in a department on the basis of such test cannot be disturbed to accommodate any other person, including those who were not selected on the ground that it is a mere transfer and posting.

7. There is nothing on the record to suggest that the Corporation has abandoned the EDP Section or do not require computer operator for its office. There is no allegation made against the appellant relating to his competency in handling computer or dealing with the matter in the EDP Section. In this background, we are of the view that the selected candidate, if posted in a department by selection on the basis of merit list, such person cannot be disturbed in an arbitrary manner to accommodate one or other, particularly those who have not been selected through a test, though it is always open to the competent authority to transfer such person for similar job in same section (computer operator - EDP Section) in any other place or other division. The aforesaid aspect has not been noticed by learned single Judge nor discussed the issue whether the action of the respondent in disturbing a selected candidate transferring him to other place to a different section is arbitrary and, thereby, it attracts Article 14 of the Constitution.

8. We, accordingly, declare the order dated 23rd Feb., 1999, passed by the respondent as illegal, set aside the order dated 6th July, 1999, passed by learned single Judge and remit the case to the respondent to decide the posting of the appellant. If EDP Section is available in one or other division, job of computer operator is taken, in such case, the respondent will post the appellant in EDP Section in any appropriate place according to administrative need. If EDP Section is in existence in the Corporation, computer operators are required, but no more additional hand is required, then it will be open to the authorities to transfer a person to other section, if the person had not been selected through any competitive test for performing the duty of computer operator. If all of them are selected through competitive test, then those who are lower in the merit list, they may be sent to other section to accommodate those, who are holding higher position in the order of merit or were selected in the earlier test. It will be open to the appellant to point out the need of computer operator in EDP Section in one or other division/place. If any adverse decision is taken, the

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authority will communicate the ground to the appellant and appropriate order be passed within a period of six weeks from the date of receipt/production of a copy of this order.

The writ appeal is allowed with the aforesaid observations. But there shall be no order as to costs.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The General Manager (Administration)
State Express Transport Corporation
Tamil Nadu Division - I Ltd.
Chennai - 2.

+ 1 cc to Mr. D. Hariparanthaman, Advocate SR No. 75599

+ 1 cc to Mr. V. R. Kamalanathan, Advocate SR No. 75626

RS(CO)
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